

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIMINAL JUSTICE

H E A R I N G

File:
Intelligence
Personnel
Protection

RE: H.R. 5150 "FEDERAL OFFICIALS PROTECTION ACT OF 1984"

DATE: WEDNESDAY, MARCH 28, 1984

TIME: 10:00 A.M.

ROOM: 2237 RAYBURN HOUSE OFFICE BUILDING

WITNESSES

JAMES KNAPP, DEPUTY ASSISTANT ATTORNEY GENERAL,
CRIMINAL DIVISION OF THE UNITED STATES DEPARTMENT
OF JUSTICE

VICE ADMIRAL E. A. BURKHALTER, DIRECTOR, INTELLIGENCE
COMMUNITY STAFF, OFFICE OF THE DIRECTOR OF CENTRAL
INTELLIGENCE

DONALD L. CHAMLEE, CHIEF PROBATION DIVISION, ADMINI-
STRATIVE OFFICE OF THE UNITED STATES COURTS,
ACCOMPANIED BY MICHAEL KEENAN, DEPUTY CHIEF,
PROBATION DIVISION, AND GUY WILLETS, CHIEF, PRETRIAL
SERVICES DIVISION, ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

RALPH ARDITO, UNITED STATES PROBATION OFFICER FOR THE
DISTRICT OF COLUMBIA, ON BEHALF OF THE FEDERAL
PROBATION OFFICERS ASSOCIATION



OPENING STATEMENT

OF

REP. JOHN CONYERS, JR., CHAIRMAN
SUBCOMMITTEE ON CRIMINAL JUSTICE

ON

H.R. 5150, THE "FEDERAL OFFICIALS PROTECTION ACT OF 1984"

WEDNESDAY, MARCH 28, 1984

CURRENT FEDERAL LAW IS HAPHAZARD IN PROVIDING CRIMINAL PENALTIES FOR VIOLENCE AND THREATS DIRECTED AT FEDERAL OFFICERS AND EMPLOYEES. SOME OFFICIALS, SUCH AS THE PRESIDENT AND MEMBERS OF CONGRESS, ARE AFFORDED COMPLETE PROTECTION BECAUSE THE IMPORTANCE OF THEIR POSITIONS MAKES THEM LIKELY TARGETS FOR VIOLENCE AND THREATS. THUS, SECTIONS 351 AND 1751 OF TITLE 18, UNITED STATES CODE, MAKE IT A FEDERAL CRIME TO ASSAULT, COMMIT MURDER OF, OR ATTEMPT TO COMMIT MURDER OF ANY OFFICIAL DESIGNATED IN THOSE SECTIONS, WHETHER OR NOT THE OFFENDER INTENDED TO INTERFERE WITH THE PERFORMANCE OF OFFICIAL DUTIES.

OTHER FEDERAL OFFICIALS ARE AFFORDED LIMITED PROTECTION. THE POLICY BEHIND THE RELEVANT PROVISIONS OF TITLE 18 APPEARS TO BE TO PROTECT FEDERAL OFFICIALS WHO ARE EXPOSED TO A SIGNIFICANT RISK OF THREATS OR VIOLENCE INTENDED TO INFLUENCE OR INTIMIDATE THEM IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES. THUS, SECTION

PAGE 2

1114 OF TITLE 18 MAKES IT A CRIME TO COMMIT MURDER (AS DEFINED IN SECTION 1111 OF TITLE 18) OR MANSLAUGHTER (AS DEFINED IN SECTION 1112 OF TITLE 18) OF CERTAIN FEDERAL OFFICIALS (WHO ARE LISTED IN SECTION 1114) BECAUSE OF THEIR PERFORMANCE OF OFFICIAL DUTIES, AND SECTION 111 OF TITLE 18 MAKES IT A CRIME FORCIBLY TO ASSAULT, RESIST, OR INTIMIDATE THE OFFICIALS LISTED IN SECTION 1114 BECAUSE OF THEIR PERFORMANCE OF OFFICIAL DUTIES.

THE LIST OF OFFICIALS IN SECTION 1114 IS A CURIOUS HODGEPODGE THAT INCLUDES FEDERAL JUDGES AND PROSECUTORS, FEDERAL LAW ENFORCEMENT PERSONNEL LIKE F.B.I. AND SECRET SERVICE AGENTS, AND VARIOUS OTHER FEDERAL EMPLOYEES, SUCH AS EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE DESIGNATED BY THE SECRETARY OF AGRICULTURE "TO PERFORM ANY FUNCTION IN CONNECTION WITH ANY FEDERAL OR STATE PROGRAM . . . FOR THE CONTROL OR ERADICATION OR PREVENTION OF THE INTRODUCTION OR DISSEMINATION OF ANIMAL DISEASES"

CURRENT FEDERAL LAW HAS SHORTCOMINGS. IT DOES NOT COVER THREATS OR VIOLENCE DIRECTED AT IMMEDIATE FAMILY MEMBERS OF ANY FEDERAL OFFICIALS OTHER THAN THE PRESIDENT AND VICE PRESIDENT. IT DOES NOT PROHIBIT ATTEMPTED MURDER OF MOST FEDERAL OFFICIALS. IT DOES NOT PROHIBIT THREATS OF VIOLENCE AGAINST THE FEDERAL OFFICIALS LISTED IN SECTION 1114 AND 351 (MEMBERS OF CONGRESS, SUPREME COURT JUSTICES, AND CABINET MEMBERS). FINALLY, THE LIST OF OFFICIALS AFFORDED PROTECTION BY SECTION 1114 IS INCOMPLETE.

PAGE 3

IT DOES NOT, FOR EXAMPLE, INCLUDE FEDERAL PROBATION OFFICERS, WHOSE WORK WITH CRIMINAL OFFENDERS SURELY EXPOSES THEM TO A SIGNIFICANT RISK OF THREATS OR VIOLENCE. THIS LIST MAY ALSO BE OVERLY INCLUSIVE, AND IT MAY BE POSSIBLE TO REMOVE FROM THE LIST SOME OF THOSE OFFICERS AND EMPLOYEES PRESENTLY ON IT.

I INTRODUCED H.R. 5150 TO RECTIFY THESE SHORTCOMINGS OF PRESENT LAW. MY BILL DOES THE FOLLOWING:

- FIRST, IT EXPANDS THE PROTECTIONS OF PRESENT LAW TO INCLUDE FAMILY MEMBERS OF PROTECTED OFFICIALS. THUS, FOR EXAMPLE, IT WOULD BE A FEDERAL OFFENSE TO ASSAULT THE SPOUSE OF A FEDERAL JUDGE WITH THE INTENT OF INTERFERING WITH OR INFLUENCING THE JUDGE'S OFFICIAL DUTIES.
- SECOND, IT EXPANDS THE CURRENT LIST OF FEDERAL OFFICIALS IN SECTION 1114 TO INCLUDE PROBATION OFFICERS, PRETRIAL SERVICES EMPLOYEES, AND OFFICERS AND EMPLOYEES OF AGENCIES INVOLVED IN GATHERING AND ANALYZING FOREIGN INTELLIGENCE.
- THIRD, IT MAKES IT AN OFFENSE TO ATTEMPT TO COMMIT MURDER OF A LISTED OFFICIAL OR AN IMMEDIATE FAMILY MEMBER OF SUCH AN OFFICIAL.
- FINALLY, IT MAKES IT AN OFFENSE TO THREATEN TO ASSAULT OR TO MURDER THOSE LISTED OFFICIALS NOT CURRENTLY PROTECTED OR THEIR IMMEDIATE FAMILY MEMBERS.

I AM SUBMITTING FOR THE RECORD A SECTION BY SECTION ANALYSIS OF THE BILL.

PAGE 4

IN ADDITION TO MY BILL, THE SUBCOMMITTEE HAS SEVERAL OTHER BILLS PENDING BEFORE IT THAT DEAL WITH THE PROTECTION OF FEDERAL OFFICIALS. THESE BILLS INCLUDE: H.R. 812, WHICH ADDS PROBATION AND PRETRIAL SERVICES OFFICERS TO THE LIST IN 18 U.S.C. 1114; H.R. 1021, WHICH WOULD EXPAND THE LIST IN SECTION 1114 TO INCLUDE "ANY INDIVIDUAL HOLDING AN APPOINTIVE POSITION IN THE CIVIL SERVICE"; H.R. 1387, WHICH WOULD ADD TO THE SECTION 1114 LIST ANY GENERAL SERVICES ADMINISTRATION EMPLOYEE ASSIGNED TO POLICE AND PROTECT PROPERTY UNDER THE JURISDICTION OF THE ADMINISTRATOR OF GENERAL SERVICES; S. 779, WHICH ADDS PROBATION OFFICERS, PRETRIAL SERVICE OFFICERS, AND OFFICERS AND EMPLOYEES OF THE INTELLIGENCE COMMUNITY TO THE LIST IN SECTION 1114; AND PARTS G AND K OF TITLE X OF S. 1762, THE OMNIBUS CRIMES BILL PASSED BY THE SENATE.

SECTION BY SECTION ANALYSIS OF H.R. 5150

SECTION ONE of the bill sets forth the short title: "Federal Officials Protection Act of 1984."

SECTION 2(a) of the bill replaces current 18 U.S.C. 111 with a new section as follows:

Subsection (a) of proposed 18 U.S.C. 111 makes it an offense to (1) use physical force causing serious bodily injury to a Federally protected officer or (2) use a dangerous weapon causing bodily injury to such a person. The offense requires that the perpetrator have the specific intent to impede, intimidate, or interfere with the performance of the officer's official duty, or be acting in retaliation for the performance of such duty. The actor must also recklessly disregard the risk that injury will occur. Attempts to violate the subsection are also prohibited. A violation is punishable by a maximum of 5 years imprisonment and a fine of \$250,000.

Subsection (b) of proposed 18 U.S.C. 111 makes it an offense to use physical force causing injury to a Federally protected officer. The state of mind requirements are the same as in proposed subsection (a). A violation is punishable by a maximum of three years imprisonment and a fine of \$250,000.

Subsection (c) of proposed 18 U.S.C. 111 makes it an offense to (1) use physical force causing a substantial risk of serious bodily injury to a Federally protected officer or (2) use a

(- 2 -

dangerous weapon causing a substantial risk of bodily injury to such a person. The state of mind requirements are the same as in proposed subsection (a). A violation is punishable by a maximum of three years imprisonment and a fine of \$250,000.

Subsection (d) of proposed 18 U.S.C. 111 makes it an offense to intentionally impede, oppose or interfere with the performance of a Federally protected officer's official duties by the use of physical force. A violation is punishable by a maximum of one year imprisonment and a fine of \$100,000.

Subsection (e) of proposed 18 U.S.C. 111 provides definitions for the section.

(SECTION 2(b) of the bill amends chapter 7 of title 18, United States Code, by adding a new section 115 as follows:

Subsection (a) of proposed section 115 makes it an offense to engage in conduct described in proposed section 111 if such conduct is directed at a family member of a Federally protected officer rather than at the officer. The state of mind requirements and penalties are the same as those in proposed section 111.

Subsection (b) of proposed section 115 makes it an offense to engage in conduct described in proposed section 111 if such conduct is directed at a family member of a United States official and the perpetrator's intent is to impede, intimidate or interfere

- 3 -

with that official in the performance of official duties or to retaliate for the performance of such duties. The state of mind requirements and penalties are the same as those in proposed section 111.

Subsection (c) of proposed section 115 provides definitions for the section.

SECTION 2(c) of the bill amends the table of sections of chapter 7 of title 18 to conform to the changes made by subsections (a) and (b) of section 2 of the bill.

SECTION 3(a) of the bill amends chapter 41 of title 18, United States Code, by adding a new section 880, which would make it an offense intentionally to impede, oppose or interfere with the performance of a Federally protected officer's official duties by threatening to commit an offense prohibited by section 111(a) or 1114 of title 18. A violation of section 880 is punishable by maximum of one year imprisonment and a fine of \$100,000.

SECTION 3(b) of the bill amends the table of sections of chapter 41 of title 18, United States Code, to conform to the changes made by section 3(a) of the bill

- 4 -

SECTION 4 of the Bill replaces current 18 U.S.C. 1114 with a new section as follows:

Subsection (a)(1) of proposed 18 U.S.C. 1114 makes it an offense to commit murder or manslaughter of a Federally protected officer or an immediate family member of that officer with the intent to impede, intimidate, or interfere with the performance of the officer's official duties, or to retaliate for the performance of such duties. A violation is punishable as is currently provided in 18 U.S.C. 1111 (in the case of murder) and 1112 (in the case of manslaughter).

Subsection (a)(2) of proposal 18 U.S.C. 1114 makes it an offense to commit murder or manslaughter of an immediate family member of a United States official. A violation is punishable as is provided in 18 U.S.C. 1111 (in the case of murder) and 1112 (in the case of manslaughter).

Subsection (b) of proposed 18 U.S.C. 1114 makes it an offense to attempt to murder a Federally protected officer. A violation is punishable by a maximum of ten years imprisonment and a fine of \$250,000.

Subsection (c) of proposed 18 U.S.C. 1114 provides definitions for the section. Subsection (c)(1) defines the term "Federally protected officer" to include Federal judges and jurors, Federal law enforcement personnel, Federal probation officer, and officers and employees of federal agencies involved in collecting and analyzing foreign intelligence.

PREPARED STATEMENT
OF
DONALD L. CHAMLEE
CHIEF OF THE DIVISION OF PROBATION
ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

BEFORE THE SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

H.R. 5150, THE FEDERAL OFFICIALS
PROTECTION ACT OF 1984

MARCH 28, 1984

Mr. Chairman and Members of the Subcommittee, I am Donald L. Chamlee, chief of the Division of Probation, Administrative Office of the United States Courts. I appear before you on behalf of the Administrative Office of the United States Courts and the Judicial Conference of the United States. I appreciate the opportunity to testify before this Subcommittee on H.R. 5150, the "Federal Officials Protection Act of 1984." I would like to address specifically the provisions of H.R. 5150 that apply to United States probation officers and pretrial services officers.

Current Federal law contains no criminal penalties for violent acts directed against U. S. probation officers and pretrial services officers that are related to the performance of their official duties. Title 18, USC, Section 1114 now provides that whoever kills any of certain designated officers or employees of the United States while they are engaged in or on account of the performance of their official duties shall be punished as provided in Sections 1111 and 1112 which relate respectively to murder and manslaughter. Section 111 makes it a felony to forcibly assault, resist, oppose, impede, intimidate, or interfere with any of the persons designated in Section 1114. Among the employees covered by Section 1114 are Federal judges, U. S. attorneys and assistant U. S. attorneys, U. S. marshals and deputy marshals, employees of Federal penal or correctional institutions, and Federal law enforcement officers. These Federal employees interact with the same client population with which U. S. probation officers and pretrial services officers interact in the performance of their duties. In fact, probation

officers' contacts with these individuals are usually more protracted and personal. Probation and pretrial services officers are subject to the same, if not greater dangers, than those employees that are now included in 1114.

The passage of legislation making it a Federal offense to kill or assault a U. S. probation officer has for over 30 years been an issue of serious concern to the Judicial Conference and the entire Federal judiciary. At Judicial Conference meetings, dating back to September 1952, the Conference has approved or reaffirmed approval of such protective legislation. Draft bills to provide protection for probation officers have been introduced in Congress since March 1955. Attempting to gain passage of this legislation has been a long and arduous effort for its principal sponsors - the Administrative Office, the Federal Probation Officers Association, and the Judicial Conference.

During this Congress, legislation providing such protection has been passed in the Senate. S.779, the Intelligence Personnel and Probation Officers Protection Act, was passed by unanimous consent on November 18, 1983. This bill amends title 18 U.S.C. section 1114 to include U. S. probation and pretrial services officers within the protective provisions of that statute. The Probation Division of the Administrative Office of the U. S. Courts endorsed and supported S.779, which does not call for substantial changes in the existing statute and which, because it is narrowly drawn, proved acceptable to the Senate. S.1762, the Comprehensive Crime Control Act of 1983, passed by the Senate on February 2, 1984, also extends the

protective provisions of section 1114 to U. S. probation and pretrial services officers.

We are pleased, Mr. Chairman, that you and this Subcommittee have recognized, in introducing H.R. 5150, the need to extend the protection of the violent crimes provisions of the Federal Criminal Code to U. S. probation and pretrial services officers. H.R. 5150 would amend title 18 U.S.C. sections 111 and 1114 and would add new sections establishing Federal criminal penalties for job-related assaults, murders, attempted murders, threats, and extortion directed against certain Federal employees including U. S. probation and pretrial services officers.

We have two recommendations concerning specific provisions of the bill. First, we recommend that §1114(c)(1)(E), as amended by the bill (page 7, line 25), state "U. S. probation employees" rather than "a probation officer." This language would then be consistent with that pertaining to pretrial services employees at subsection (c)(1)(F) and would provide coverage to probation officer assistants, who perform a variety of jobs as paraprofessionals in the Federal Probation System, and to probation clerks. Of the two persons in the Federal Probation System killed in the performance of their duties, one was a clerk who was fatally shot by a parolee in December 1966.

Second, H.R. 5150 apparently would not bring under Federal jurisdiction acts of violence perpetrated against employees while engaged in the performance of their duties, but not necessarily intended to impede the performance of these duties. Probation officers are required to spend a considerable amount of

their time contacting probationers and parolees in the communities where they live and work. These field contacts might be in high crime areas or in remote rural areas, both of which can present special safety problems. An assault or murder of a probation officer while making field contacts would not be covered under H.R. 5150 unless the assailant acted with the intent of impeding the officer's performance of his or her duties. The issue, it seems, is not the intent of the assailant, but whether the officer was in the process of carrying out statutory responsibilities and, if so, whether Federal jurisdiction in investigating and prosecuting the crime is warranted. We believe that it is warranted and recommend that the bill be amended to so reflect.

Federal probation officers and pretrial services officers are, by statute, given duties and responsibilities, the performance of which subjects them to personal hazards on a daily basis. Probation officers do extensive investigative work for the courts, the Federal Bureau of Prisons, and the U. S. Parole Commission. They make recommendations to courts concerning bail release and sentencing. Recommendations may include whether defendants should be released on bond, whether they should be incarcerated or placed on probation and under what special conditions. They supervise persons on court probation, pretrial release, pretrial diversion, U. S. magistrate probation, parole, mandatory release, military parole, and special parole. Supervision includes counseling, guidance, supportive assistance, and surveillance. Officers are required to maintain regular

contact with those placed under their supervision. Contacts can occur in the probation office, courts, jail lock-ups, community, or in residences of those under supervision. If the offender receives a sentence of incarceration, probation officers investigate furlough requests, parole plans, and later provide parole supervision. Probation officers also investigate and report all violations of probation and parole. Probation and pretrial services officers are the component in the Federal criminal justice network that has the most sustained relationship with the offender. They are there through most of the offender's experience with the criminal justice system, from bail investigation and setting, to the presentence investigation and sentencing, through probation or parole supervision. The very nature of the work, the elements of pretrial and presentence investigation and subsequent supervision, can produce tensions and hostilities toward probation officers that are sometimes vented by violence or threats of violence against them.

Probation officers are authorized by statute to arrest probationers with or without a warrant. They are considered law enforcement officers for purposes of the Federal Tort Claims Act and are included under special retirement provisions for law enforcement officers. Though the majority of probation officers do not arm themselves, they are authorized to carry weapons while in the performance of their official duties subject to Judicial Conference regulations. Recently, the U. S. Parole Commission adopted a rule authorizing probation officers to search the persons of parolees and mandatory releasees for signs of drug use

and to seize contraband including drugs and weapons.

For the year ending December 31, 1983, the Federal Probation System staff of over 1,700 probation officers and 80 pretrial services officers were providing supervision of over 60,000 persons. Probation officers completed over 30,000 presentence investigation reports. At the completion of fiscal year 1983, United States probation officers were providing probation and parole supervision for 5,130 drug dependent offenders.

While the routine work of probation and pretrial services officers exposes them to the potential assaults and other types of hazards, it is the "special offenders" they supervise that present the greatest potential for violence.

Probation officers provide supervision for probationers and parolees in the Federal Witness Protection Program. There are currently some over 200 such protected witnesses under supervision. Many of these individuals are placed in the program for protection from reprisals by organized crime figures against whom they have testified. The House Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice has reported H.R. 4249, the United States Marshals Service and Witness Security Reform Act of 1983. If passed, this bill would have U. S. probation officers, upon the request of the Attorney General, provide supervision for state probationers and parolees placed in the Witness Protection Program.

Violent prison gangs are also an increasing problem. There are five known groups that are causing serious problems in

the Federal and some state prison systems. These are the Aryan Brotherhood, La Nuestra Familia, the Mexican Mafia, the Black Guerrilla Family, and the Texas Syndicate. These gangs are networks of individuals organized for the purpose of engaging in and controlling criminal activities within prisons. Acts of violence, including murder, are sometimes a prerequisite for gaining membership and maintaining status within the gangs. Probation and pretrial services officers must serve the same investigative and supervision functions with these dangerous individuals as required in other cases.

I am sure you will remember the incident in February 1983 when a U. S. marshal and a deputy marshal were slain by a member of the Posse Comitatus, a tax protest group. The killer was a probation violator and the marshals were attempting to execute a probation violator's warrant at the time of the murders.

I cite the foregoing to emphasize the potential hazards faced by our officers in the performance of their statutory responsibilities. The extent of these hazards has been tragically demonstrated by the shootings of three probation officers while in the performance of their official duties -- one in Memphis in May 1973; one in the District of Columbia in June 1974; and the third a fatal shooting outside the Federal courthouse in Laredo, Texas, in December 1978. These shootings were not within Federal investigative or prosecutorial jurisdiction. Nor are most of the threats, assaults, and other hazardous incidents which are reported to the Probation Division annually by probation officers and other probation staff members.

During calendar year 1983, 41 incidents were reported. Twenty-one of the incidents were threats against probation officers or their families. Two involved physical attacks upon probation officers and 4 additional threatening incidents neared physical attack. During the first 3 months of 1984, we have already received 10 reports of hazardous incidents.

Considering the ever-present danger that exists, it is fortunate that more serious injuries or threats have not occurred. I am sure you can understand why passage of legislation protecting Federal probation and pretrial services officers is important to the Federal judiciary and has been endorsed by the Judicial Conference. As chief of the Probation Division and on behalf of the Administrative Office of the United States Courts and the Judicial Conference of the United States, I applaud your efforts in this regard and strongly urge the Congress to enact such legislation.

**PREPARED STATEMENT
OF
RALPH ARDITO, JR.
PRESIDENT OF THE
FEDERAL PROBATION OFFICERS ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES
CONCERNING
FEDERAL OFFICIALS PROTECTION ACT OF 1984**

Mr. Chairman, Members of the Committee, I am Ralph Ardito, Jr., a U. S. Probation Officer for the District of Columbia. I am also President of the Federal Probation Officers Association which has a potential membership of more than 1700 individuals. I appear before the subcommittee in my capacity of President of the Federal Probation Officers Association.

On behalf of the association, I wish to thank the committee for the opportunity to appear to testify on H.R. 5150, "Federal Officials Protection Act of 1984". The Federal Probation Officers Association has always believed that we should be included as protective officials of the United States Government by statute. We are grateful to Mr. Conyers, as well as to the other members of Congress who have introduced legislation that recognize Federal Probation and Pretrial Service Officers as an integral part of the Criminal Justice System. We believe that the work that we complete for the U. S. District Courts, the Federal Bureau of Prisons System, and the U. S. Parole Commission justify our inclusion under the Federal Protection statute.

The U. S. Probation and Pretrial Service Officers have two major areas of responsibility. The first is the investigation of individuals who appear in pre-adjudication status for bail hearings and the completion of presentence reports when an individual has been convicted of a federal crime before the U. S. District Court Judge. In the former case, Pretrial Service Officers make specific recommendations regarding bond and possible detention prior to trial. In the latter situation, the U. S. Probation Officers make specific recommendations as to criminal sanctions to be imposed at the time of sentencing. These clients are fully aware that U. S. District Court Judges and Magistrates rely heavily on the recommendation of the U. S. Probation Officer. In fact, a study completed by the U. S. Probation Office, District of

Columbia, approximately four years ago, revealed that the court followed these specific recommendations of the Probation Officer approximately 80% of the time. It is reasonable to assume that any vindictive behavior directed at the court would also be displaced to the U. S. Probation or Pretrial Service Officer.

The second major responsibility for U. S. Probation and Pretrial Service Officers is the supervision of individuals under the jurisdiction of the U. S. District Courts or the U. S. Parole System. The philosophical dilemma for all U. S. Probation and Pretrial Service Officers has been the "rehabilitation of the individual" versus the "protection of the community". All U. S. Probation and Pretrial Service Officers first attempt to work with the individual in terms of modifying past negative behavior patterns. However, more than 50% of the population under supervision usually recidivate. Therefore, the U. S. Probation and Pretrial Service Officer must take action to insure that the public is protected from dangerous and violent individuals. In order to perform this particular function, the U. S. Probation and Pretrial Service Officers must work in tense, inner-city communities which do afford hostile environments, as well as to travel to remote rural and isolated reservations. Officers must regularly conduct interviews in jail environments and they must pursue highly sensitive types of information which might prove to be adverse to convicted persons and associates of convicted individuals.

U. S. Probation Officers do have the authority to arrest without warrant any probationer who is found to be in violation of the terms of supervision. Beginning April 1, 1984, the U. S. Probation Officers have the authority to search and seize in plain view contraband that may constitute a violation of parole or mandatory release. U. S. Probation

Officers also have the authority to carry firearms under the direction of the Judicial Conference of the United States. At the present time, more than 30 districts have been authorized to carry a weapon in the performance of their official duties.

In 1983, the Federal Probation Officers Association developed a position paper that was used in support of H.R. 812 and S779, two bills that would protect U. S. Probation and Pretrial Service Officers by statute. It was the association's position that Federal Probation and Pretrial Service Officers, like many other law enforcement agents, work under conditions and circumstances which afford significant physical, mental and emotional stress, and that these officers were exposed to hazards that regular Civil Service employees were not exposed to. Research was conducted with the Probation Division of the U. S. Courts which revealed that from 1977 through 1982, 355 hazardous duty incidents involving U. S. Probation Officers were reported to the Administrative Office of the U. S. Courts. Of significance, the data revealed that one U. S. Probation Officer had been murdered; a Probation Clerk was abducted at knifepoint; there were 21 threats to life; there were 13 physical assaults; handguns and shotguns (loaded) were confiscated on 10 occasions; three knives were confiscated; four threats with a knife were reported; there was one robbery and assault at knifepoint; there were four incidents where weapons were visible but not confiscated; and there were nine additional assaults that involved guns, baseball bats, can openers and bottles. In 90% of these reports, the clients involved were identified as having drug, alcohol or psychiatric problems. The Federal Probation Officers Association feels that this data is significant when compared to other Civil Service employees now protected by statute. With all due respect to employees of the Department of Agriculture who are charged with the Protection and Preservation of Wild Birds and Animals

or to agents of the Consumer Product Safety Commission, the association does believe that our responsibilities place us in much greater danger, as we work with the convicted and often times dangerous parolee or probationer.

The report that accompanied S779 addressed the Pretrial Service Act of 1982 (Public Law 97-267). This report stated that under Title 18, U. S. Code, Section 3154, as amended by the Act, Pretrial Service Officers and Probation Officers who perform pretrial service functions are authorized to report to the court concerning the bail worthiness of a defendant including any information relating to any danger that he might pose to the community if released. The officer will make recommendations concerning the appropriate release conditions and he or she was charged with the responsibility to supervise those persons released to their custody. These officers would also operate facilities for the custody or care of released persons that included addict and alcoholic treatment centers. They would also inform the court and the U. S. Attorney of all violations of pretrial release conditions, arrests, or any other danger that this individual would pose to any person in the community. These functions would expose the officer to considerable personal risks, including the risk of retaliation by defendants, their families, or their friends for the release recommendations that the officer would make.

In recent years, probation districts have formed specialized units for treatment and supervision of the drug-addicted client, the alcoholic, the mentally impaired individual, and the organized crime person. It is my professional opinion that the officers performing the specialized functions are inherently at greater risk than the majority of individuals now protected by statute. As previously stated, the majority of the most dangerous hazardous duty incidents involved

individuals who had psychiatric, alcohol or drug problems. The association believes that the courts and the U. S. Parole Commission should identify specialized problems and require the supervised client to participate in appropriate treatment programs. We also wish the Congress to understand that it is these specific clients that present the most potential threat to the officers responsible for supervision. In the majority of districts, each Probation Officer has a cross-section of clients with alcohol, drug or mental health conditions. There are also a small number of districts that have established organized crime units that work directly with either the drug enforcement agency, organized crime task forces, or the Federal Bureau of Investigation to do surveillance work in non-business hours. These officers are also responsible for maintaining close contact with the organized crime person outside the office setting.

At our most recent board meeting in March of 1984, we had the opportunity to be addressed by Mr. Jerry Farkas, Deputy Director, U.S. Bureau of Prisons System. Mr. Farkas informed the Board that there are more than 30,000 individuals currently confined in federal institutions. These charges range from petty offenses to Murder. In more than 95% of the cases, the U. S. Probation Officers will be responsible for their supervision upon their eventual release. In addition to the responsibility of supervising federal offenders, a recent bill introduced (H.R. 4249) will give U. S. Probation Officers the responsibility of providing supervision and protection to state violators. It is the association's understanding that these state probation and parole cases will be handled the same as federal witness protection cases.

The Federal Probation Officers Association realizes that the passage of this legislation will not provide any further protection

- 6 -

to our officers. We believe, in fact, that the hazardous incidents will increase as a result of the continued release of violent and dangerous offenders from federal institutions. The U. S. Probation and Pretrial Service Officers desire the recognition, as well as the protection by statute, that we do attempt to protect the community by working with the difficult and often times dangerous client. We feel that we work for the U. S. Courts and accordingly the U. S. Government, and if threatened, assaulted, or murdered, the individual responsible should be prosecuted in the U. S. Courts. The officer who was murdered in 1978 on the steps of the U. S. Courthouse was tried in a state court. That individual will be confined in a state institution and paroled to state authorities. We feel that that is totally unacceptable when a U. S. Probation Officer has given his life in the performance of his official duties. The Federal Probation Officers Association strongly encourages this committee to support this important and needed legislation.

STATEMENT OF
VICE ADMIRAL E. A. BURKHALTER, JR., U.S.N.
DIRECTOR
INTELLIGENCE COMMUNITY STAFF
BEFORE THE
SUBCOMMITTEE ON CRIMINAL JUSTICE
OF THE
HOUSE COMMITTEE ON THE JUDICIARY
ON S.1762 AND RELATED BILLS
CONCERNING THE PROTECTION
OF INTELLIGENCE PERSONNEL
MARCH 28, 1984
11:00 A.M.
ROOM 2237
RAYBURN HOUSE OFFICE BUILDING

Mr. Chairman and members of the Subcommittee, I am Vice Admiral E. A. Burkhalter, the Director of The Intelligence Community Staff. I am pleased to be here today to discuss the need for legislation that will provide federal criminal penalties for attacks on United States intelligence personnel.

The Federal Government has a compelling interest in assuring the physical safety of intelligence personnel. Except in relatively unusual circumstances such as attacks within the special maritime and territorial jurisdiction of the United States, violent attacks on these individuals constitute crimes only under state and local laws, and those jurisdictions may lack the capabilities needed to detect and prevent, or to investigate and prosecute, attacks directed at intelligence personnel. The need for federal law enforcement authority to investigate and prosecute such crimes is particularly acute in cases involving international implications or national security matters.

Currently, there are three legislative proposals before your committee. S. 779, the Intelligence Personnel Protection Act, would amend section 1114 of Title 18 of the United States Code to include probation officers and intelligence personnel within the scope of the general federal law criminalizing the

manslaughter of federal officers. Parts G and K of Title X of S. 1762, also presently before your Subcommittee, would amend the federal criminal laws to protect not only intelligence personnel, but also their families. Finally, there is a newly introduced bill, H.R. 5150, the Federal Officials Protection Act of 1984, which has a similar goal. The Intelligence Community defers to the Department of Justice concerning the relative desirability of these three pieces of legislation.

Legislation similar to the bills before this Subcommittee have been proposed in the past. Both the previous Carter and the present Reagan Administrations have supported similar legislation that would protect intelligence personnel. In the 97th Congress the Senate passed similar bills on two occasions, first in 1981, as section 510 of S. 1127, the Fiscal Year 1982 Intelligence Authorization Act, and then as separate legislation, S. 2552. The Intelligence Community urges enactment of the provisions similar to these earlier bills to remedy the practical problem of violence directed at individuals whose physical safety is essential to the vital federal function of determining the capabilities and intentions of foreign powers.

The history of violence directed at U.S. intelligence personnel amply demonstrates the need for this legislation. The problem first achieved major proportions in the latter half of the 1960's, a period of great turbulence in America. Intelligence Community personnel, particularly personnel recruiters who interview prospective employees on college campuses in the same manner as recruiters for American business, were subjected to violence or threats of violence in twenty-seven cases. The most dangerous of these episodes involved the dynamite bombing of a recruiter's office in Michigan. Fortunately, in all these instances, the intelligence personnel involved escaped death or serious bodily harm.

One would have hoped that the incidents of violence directed at intelligence personnel could be categorized as an historical aberration, a reflection of the violence of the times in the late 1960's. Unfortunately, Mr. Chairman, incidents of violence directed at intelligence personnel have continued.

In 1975, an intelligence officer, his wife, and his fourteen-year-old son asleep in their home in Colorado were the target of a dynamite pipe bomb which damaged the roof of the

house and shattered windows, but fortunately did not injure the individuals. At a subsequent time, an office associated with the Intelligence Community was the subject of a dynamite bombing. In 1978, a personnel recruiter was assaulted at a midwestern university. In 1981, a man entered a personnel recruiter's motel room in Illinois and threatened to kill him, apparently for his intelligence recruitment activity.

This list of violence directed at intelligence personnel includes only cases in which overt acts of violence occurred. In addition, during the years 1978 to 1982 between 25 and 50 telephone threats of violence per year were made to overt intelligence personnel. Mail threats are also received on a continuing basis. A recent example of these mail threats occurred in September of 1983 when Intelligence Community personnel recruiters in major cities across the United States received a typewritten flyer written by the "Weather Underground Peace Action" threatening their lives. From this discussion of violence aimed at intelligence personnel, I have excluded incidents of violence or threats of violence aimed at the Director or Deputy Director of Central Intelligence who are already protected by the federal criminal code.

The need for federal criminal penalties for violence directed at intelligence personnel stems not only from the need to protect the physical safety of individuals performing a unique federal function, but also from the practical needs of law enforcement in such matters. Because close working relationships exist among the departments and agencies of the Intelligence Community, which includes the Federal Bureau of Investigation, the coordination mechanism and the basic intelligence expertise necessary to investigate violent crimes involving intelligence personnel already exists in the Federal Bureau of Investigation. The Federal Bureau of Investigation will not be required to develop new law enforcement capabilities to enforce the provisions of the criminal code as amended by the provisions of this bill to include protection for the officers and employees of the Intelligence Community. I wish to emphasize that it is not the degree of frequency of attacks on intelligence personnel that requires federal jurisdiction. It is, rather, the nature of the crime; namely, direct interference with a vital federal function.

In conclusion, Mr. Chairman, the protection of intelligence personnel through the application of the federal criminal laws is long overdue and amply warranted by the facts. The

Intelligence Community strongly supports adoption of legislation that will protect intelligence personnel and urges your Committee to act favorably upon legislation that would provide this protection.

Mr. Chairman, I would be pleased to answer any questions the Subcommittee may have.

Question: Why do you need federal legislation to protect intelligence personnel? Are state and local law enforcement agencies unwilling or unable to investigate and prosecute attacks against intelligence personnel?

Answer: There are two reasons we support federal legislation protecting intelligence personnel.

First, we believe it is only fair to provide federal protection to all federal employees who are subject to attack as a result of carrying out important federal functions. In this regard we believe that intelligence personnel deserve the same federal protection provided to employees of the Postal Service and the Department of Agriculture.

Second, while we cannot say that state and local law enforcement agencies are unwilling or unable to investigate attacks on intelligence personnel, we do believe that the FBI can bring the highest expertise to an investigation in this area. Also, attacks on intelligence personnel may involve counterintelligence issues that are the responsibility of the FBI.

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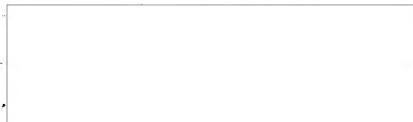
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